IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.4.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.5929 of 1999

E.Antony
rep., by its Power of Attorney
Chandrapappa .. Petitioner

vs.

1.Special Tahsildar
(Adi Dravidar Welfare)
Nanguneri, Tirunelveli.

2.The Collector of Tirunelveli
District, Tirunelveli.
.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari, as stated therein.

For Petitioner : M/s.Chitra Sampath
For Respondents : Mrs.Bhavani Subbaroyan,
Govt. Advocate.

ORDER

This writ Petition has been filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari, calling for the records of the respondents in connection with 4(1) notification in Na.Ka.Pa.1/82282/98 dated 18.11.1998 as published in the Tirunelveli District Gazette dated 25.11.1998 and the consequent award in Award No.5/98-99 (A/874/98) dated 3.3.1999 passed by the 1st respondent and quash the same.

2.The petitioner purchased an extent of 10.13 acres under a registered sale deed dated 2.3.1979 in the village of Seevalaperi, Kalakad, Nanguneri Taluk in S.No.50/1A and 50/1B along with a well, 3 H.P. motor pumpset and service connection. On 13.2.99, the wife of the petitioner received a notice from the 1st respondent under Sec.5(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, (Act 31/1978), hereinafter called 'the Act' in Form III dated 28.1.99. In that notice, a hearing was fixed by the 1st respondent on 15.2.99 and on that

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day the wife of the petitioner appeared for the petitioner and submitted her objections and sought for time for getting necessary instructions from her husband who was away in Dhubai. But the 1st respondent proceeded to pass an order rejecting her request and fixed the value of the property acquired at Rs.85,100/-. Hence the petitioner filed the writ petition through his power of attorney who is his wife, to quash the Sec.4(1) notification.

3.The respondents filed a counter affidavit stating that the procedures contemplated under the Act were properly followed and therefore there is no merit in the writ petition.

4.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have also perused the documents and the judgments referred to by them in support of their submissions.

5.The learned counsel for the petitioner submitted that before publishing a notice under sub-sec.(1) of Sec.4 of the Act 31/1978, the District Collector or any officer authorised by him shall call upon the owner to show cause why the lands should not be acquired. After issuing such a notice under Sec.4(2), the objections and representation of the land owner should be heard and only thereafter notice under Sec.4(1) could be published to the effect that it was decided to acquire the lands. According to the learned counsel, this notice under Sec.4(2) is mandatory and the same was not issued to the petitioner, the entire proceedings are vitiated. She relies on the decision of this court reported in 1996(1)CTC 379(S.P.Vedanayagam v. Govt. Of Tamil Nadu) for the proposition that show cause notice under Sec.4(2)of the Act 31/1978 is a mandatory statutory requirement and it should be complied with strictly. The learned counsel further submitted that the District Collector before accepting the recommendation of the Tahsildar, should apply his mind independently and pass a detailed order dealing with the objections. She relies on the decision of this court reported in 2001(3)CTC 649(Ramakrishna Naidu, G. v. District Collector) in this regard.

6.I have considered the rival submissions carefully with regard to facts and citations.

7.The provisions of the Act 31/1978 is summary in nature compared to the provisions of the Land Acquisition Act, 1894 and therefore the authorities under the State Act should strictly comply with the terms of the Act. The one and the only opportunity given to the land owner is the issue of show cause notice under Sec.4(2) of the Act. Having regard to the vigour of the State Acts, provisions, the opportunity to show cause why the lands should not be acquired must be given as it is a statutory requirement and the compliance thereof has to be strictly adhered to.

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8.Sec.4 of the Act 31/1978 is extracted below for better appreciation:

> "4.Power to acquire land:- (1) Where the District Collector is satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.
>
> (2)Before publishing a notice under sub-section (1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired.
>
> (3)(a)The district Collector may, where he has himself called upon the owner or other person to show cause under sub-section(2), pass such orders as he may deem fit on the cause so shown;
>
> (b)Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section(2), the officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the district Collector. After considering such report the District Collector may pass such orders as he may deem fit."

10.In exercise of the powers conferred by Sec.23 of the Act, the Government made rules and rule 3 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules 1979, which deals with the procedure for acquiring lands. According to Rule 3, in Form I under Sub-Sec.2 of Sec.4, a show cause notice should be served on the land owner individually and if the owner of the land resides elsewhere other than the place of the land, a show cause notice should be sent by Registered Post Acknowledgment Due to the last known address of the owner. Rule 3 is extracted below:

> "3.Procedure for Acquiring Land:- (i)The District Collector or the Officer authorised by him in this behalf shall serve a show cause notice in Form I under sub-section(2) of Section 4 individually on the owner or on all persons interested in the land to be acquired. If the owner or any other person interested

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in the land resides elsewhere than where the land is situated, the show cause notice shall be sent by registered post (Acknowledgment Due) to the last known address of the owner or any other person interested.

(ii)The District Collector, if, after passing such orders as required by sub-sections(2) and (3) of Section 4 is satisfied that it is necessary to acquire the land, notice in Form II to that effect shall be published in the District Gazette."

11.A conjoint reading of Sec.4 of the Act and Rule 3 of the Rules, would make it very clear that every effort should be taken by the authorities under the Act to issue show cause notice under Sec.4(2) before publishing in the Gazette and a notice under Sec.4(1) to the effect that the Collector has decided to acquire the land. Once a notice is published in the Gazette, on and from the date on which the notice is published, the land shall vest absolutely with the Government free from all encumbrances.

12.The case of the writ petitioner is that the mandatory notice in Form I under Sec.4(2) was not at all issued to the petitioner and the only notice the wife of the petitioner received was the notice under Rule 5(1) in Form III.

13.To this contention, the respondents submitted that the petitioner did not leave the residential address to the Village Administrative Officer or to the neighbours of the village and therefore Form I notice was affixed in the land itself by hanging it from a stick. Therefore, according to the respondents, Sec.4(2) and Rule 3 was duly complied with.

14.I am unable to accept the submissions made by the Government Advocate, for the respondents in this regard. Under Rule 3, the show cause notice in Form I should be served on the land owner individually and if individual notice is not possible, the show cause notice shall be sent by RPAD to the last known address of the land owner. Admittedly, no such notice by RPAD was sent by the respondents to the petitioner to his last known address and straight away they have affixed the 4(1) notice in the land itself, which is not in consonance with Sec.4(2) of the Act and Rule 3 of the Rules. Further, the respondents are not able to explain how they were able to send the subsequent Rule 5(1) notice in Form III to the writ petitioner to his correct address. If Form III notice could be sent to the correct address of the petitioner, what prevented the respondents from sending Form I notice under Sec.4(2) of the Act to the writ petitioner. Therefore, I am of the considered view that the mandatory provisions under Sec.4(2) of the Act and Rule 3(i) of the Rules were given a go-by resulting in vitiating the entire land acquisition proceedings.

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15.Therefore, I am inclined to allow this writ petition and the notification issued under Sec.4(1) of the Act dated 18.11.98 published in Tirunelveli District Gazette dated 25.11.98 and the subsequent acquisition proceedings are all quashed. The writ petition is allowed accordingly. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sks

To

1.Special Tahsildar
(Adi Dravidar Welfare)
Nanguneri, Tirunelveli.

2.The Collector of Tirunelveli
District, Tirunelveli.

1 cc To M/s.Chitra Sampath, Advocate, SR.23002.
1 cc To The Government Pleader, SR.23058.

W.P.5929/99.

MS(CO)
RVL 20.04.2007

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